



SENATE REPUBLICAN

POLICY COMMITTEE

## Legislative Notice

No. 26

August 2, 2007

### **S. 1 – Honest Leadership and Open Government Act of 2007 (with House Amendment)**

*S. 1 was passed by the Senate on January 18, 2007 by a vote of 96-2. The House of Representatives passed similar legislation, H.R. 2316, on May 24, 2007 by a vote of 396-22. On July 31, 2007, the House of Representatives took up and passed S.1 with a House amendment by a vote of 411-8. The Senate motion to concur in the House amendment and a motion to invoke cloture were entered on July 31, 2007.*

#### **Noteworthy**

- On July 31, 2007, the Senate received a message from the House, consisting of S. 1, the Honest Leadership and Open Government Act of 2007, with a House amendment.
- A message from the House is privileged and there is no motion to proceed.
- When the House message was received in the Senate, the Majority Leader: made a motion to concur with the House amendment with a Senate amendment; offered an amendment to the House amendment thereby filling the amendment tree; and filed cloture on the motion to concur with the House amendment.
- On Thursday, August 2, 2007, the Senate will vote on the motion to invoke cloture on the motion to concur. Because this package contains changes to Senate rules, cloture will be subject to a 2/3 hurdle of those voting (a quorum is required to be present).
- The bill amends Senate rules to enhance certain disclosures related to earmarks as well as disclosures related to travel and meals provided to Members and staff by lobbyists.
- The bill modifies statutes in relation to disclosure of lobbying activities, imposes new limits on travel and meals provided by lobbyists, and enacts greater post-employment restrictions for Senators, senior Senate staff, and senior executive branch officials, but not House Members or senior House staff.
- There is limited legislative history with respect to this bill. It was not referred to committee, hearings were not held, a mark-up was not held, there was no committee report, there was no conference, and there is no conference report.

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## Background

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A fundamental tenet of the American legal system is the First Amendment's prohibition against any law abridging the freedom of speech, the right of the people to peacefully assemble, and to petition the government for a redress of grievances.<sup>1</sup> Consistent with these constitutional rights, however, Congress has regulated lobbying activities, primarily through the Lobbying Disclosure Act of 1995 (LDA),<sup>2</sup> as amended by the Lobbying Disclosure Technical Amendments Act of 1998.<sup>3</sup>

The LDA generally requires lobbyists who are compensated for their actions, whether individuals or firms, to register and file semiannual reports of their activities with the Secretary of the Senate and the Clerk of the House. These reports identify the name of the registrant lobbyist, client, and the broad issue areas that were the subject of the lobbying activity.<sup>4</sup>

The rules of the Senate and House also impose strict limitations on Members, officers, and employees of each body with respect to gifts and travel provided by third parties, which are often associated with lobbying.<sup>5</sup> In general, Members and staff may not accept gifts (including travel and personal hospitality), reimbursements, or payments of their expenses (other than from relatives or personal friends).<sup>6</sup> The Senate and House Rules do, however, permit *de minimis* gifts valued under \$50 from private sources, with a maximum of \$100 per calendar year from any one source. Gifts under \$10 are generally excluded. Some travel expenses provided by outside, third parties may also be accepted under limited circumstances if the travel is "officially connected." Travel by staff must be authorized in writing and in advance by the supervising Member.

The Ethics Reform Act of 1989 added post-employment restrictions for Members and certain senior congressional staff, effective January 1, 1991.<sup>7</sup> Under this criminal statutory law, individuals who were Members of Congress are prohibited from "lobbying" or making advocacy communications on behalf of any other person to current Members of either House of Congress, or to any legislative branch employee, for one year after the individual leaves Congress. Additionally, senior staff employees are subject to certain one-year "cooling off" periods regarding their advocacy contacts with their former offices. Both former Members and former senior staff also are limited in representing official foreign interests before the United States government, and in taking part in certain trade and treaty negotiations, for one year after leaving congressional service.<sup>8</sup>

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<sup>1</sup>U.S. Constitution, Amendment I.

<sup>2</sup>P.L. 104-65, 109 Stat. 691, December 19, 1995.

<sup>3</sup>P.L. 105-166, 112 Stat. 38, April 6, 1998.

<sup>4</sup>For background on the LDA, see Congressional Research Service, "Lobbying Reform: Background and Legislative Proposals 109th Congress," RL33065, February 21, 2006 – <http://www.congress.gov/erp/rl/pdf/RL33065.pdf>.

<sup>5</sup>House Rule XXV, Clause 5 and Senate Rule XXXV.

<sup>6</sup>For a discussion of the current rules governing gifts and third-party sponsored travel, see CRS, "Congressional Gifts and Travel: Proposals in the 109th Congress," RL33237, January 24, 2006 – <http://www.congress.gov/erp/rl/pdf/RL33237.pdf>.

<sup>7</sup>P.L. 101-194, Title I, § 101(a), 103 Stat. 1716, November 30, 1989, as amended.

<sup>8</sup>For a discussion of the post-employment restrictions on Congressional Members and staff, see CRS, "Revolving Door, Post-Employment Laws for Federal Personnel," 97-875, updated March 11, 2003, <http://www.congress.gov/erp/rl/pdf/97-875.pdf>.

At the beginning of this Congress the Senate passed S. 1, which included provisions revising Senate ethics rules as well as statutory law regarding ethics and lobbying restrictions under the jurisdiction of the Senate Rules and Administration Committee and the Senate Homeland Security and Governmental Affairs Committee. When the Majority Leader requested a conference with the House, Republican Senators objected, expressing concerns that the earmark transparency and disclosure rules would be gutted in conference. In response, Majority Leader Reid and House Speaker Nancy Pelosi announced that rather than conference this bill, they would seek to pass this bill using amendments between the two Houses. The House passed the Senate bill with an amendment on July 31, 2007.

## **Bill Provisions**

The following is a summary of the House amendment to S. 1, the Legislative Transparency and Accountability Act of 2007:

### **Title I – Closing the Revolving Door**

#### **Post-Employment Restrictions (Sections 101 and 104)**

- Increases the “cooling off” period for Senators from one to two years before they can lobby Congress.
- Extends the one-year prohibition against senior Senate staff (those making \$123,900 or more) lobbying their former office to a prohibition against lobbying the entire Senate.
- Retains the current provision of law to prohibit House Members from lobbying Congress for one year after leaving office. (NOTE: This bill would subject Senators and House Members to different restrictions.)
- Retains current law to prohibit senior House staff from lobbying their former office or committee for one year after they leave House employment.
- Increases the prohibition on cabinet secretaries and other very senior executive personnel from lobbying the department or agency in which they worked from one year to two years after leaving their position.
- Requires that former government employees who represent tribal organizations and intertribal consortiums must be employees of the tribal entity and that the representation must be limited to matters which are governmental in nature.

#### **Prohibiting the Wrongful Influencing of Employment Decisions (Section 102)**

- Prohibits Members from influencing hiring decisions of private organizations on the sole basis of partisan political gain, subjecting violators to a fine and imprisonment.

## **Title II – Full Public Disclosure of Lobbying**

### Lobbyist Reporting and Increased Fines (Sections 201, 202, 205, 207, 209, and 211)

- Requires lobbyists to file quarterly rather than semi-annual disclosures and that such disclosures be filed electronically so that they can be made available on a publicly searchable Internet database.
- Requires the disclosure of organizations that contribute more than \$5,000 quarterly and actively participate in lobbying activities by certain coalitions and associations.
- Increases the civil penalty for willful violations from \$50,000 to \$200,000 and imposes a criminal penalty of up to five years for corrupt failure to comply with the Act.

### Transparency for Donations and Bundling (Sections 203 and 204)

- Requires lobbyists to disclose to the Secretary of the Senate and the House Clerk their campaign contributions and payments to Presidential libraries, Inaugural Committees, or entities controlled by, named for, or honoring Members of Congress.
- Requires campaign disclosure to the Federal Election Commission when lobbyists “bundle” over \$15,000 semiannually in campaign contributions.

### Prohibiting Gifts by Lobbyists (Section 206)

- Prohibits lobbyists from providing gifts or travel to Members of Congress with the knowledge that the gift or travel is in violation of House or Senate Rules.

### Comptroller Audits (Section 213)

- Requires that the Comptroller conduct an annual audit to ensure lobbyist compliance with disclosure rules.

### Sense of Congress on Lobbying by Family Members (Section 214)

- Expresses the Sense of Congress that the use of family relationships by a lobbyist who is an immediate family member of a Member to gain special advantage is inappropriate and expresses that the lobbying community should develop proposals to regulate itself.

## **Title III – Matters Relating to the House of Representatives**

### Disclosure of Employment Negotiations (Section 301)

- Prohibits House Members from engaging in any agreements or negotiations about future employment until a successor has been selected unless the Member files a statement with the Committee on Standards of Official Conduct. It also requires that Members recuse themselves from any matter in which there is a conflict of interest or appearance of a conflict.
- Requires senior staff to notify the Committee on Standards of Official Conduct within three days if they engage in negotiations or agreements for future employment or compensation.

### Prohibition on Lobbying Contact with Lobbyist-Spouse of Member (Section 302)

- Requires that House Members prohibit his staff from having any lobbying contact with the Member's spouse if such individual is a registered lobbyist or is employed or retained by a registered lobbyist to influence legislation.

### Posting of Travel and Financial Disclosure Reports on the Internet (Section 304)

- Requires that travel by House Members financed by outside groups be posted on a searchable, sortable, and downloadable public website by August 1, 2008.
- Requires that House Members' financial disclosure forms be posted on a searchable, sortable, and downloadable public website by August 1, 2008.

### Participation in Lobbyist-Sponsored Events During Political Conventions (Section 305)

- Prohibits House Members from attending parties held in their honor at national party conventions if the events have been sponsored by lobbyists, unless the Member is the party's presidential or vice presidential nominee.

## **Title IV – Congressional Pension Accountability**

### Loss of Pensions by Members for Abusing the Public Trust (Section 401)

- Denies Congressional retirement benefits to Members of Congress who are convicted of bribery, perjury, conspiracy, or other related crimes in the course of carrying out their official duties as a Member of Congress.

## **Title V – Senate Legislative Transparency and Accountability**

### Procedural Reform (Amendments to Rule 28) (Sections 511–515)

- Requires that conference reports be publicly available at least 48 hours before a vote.
- Seeks to end secret Senate holds by requiring a Senator who places a hold on a legislative matter or nomination to publicly disclose that hold within six days.
  - Those concerned with this provision have noted that this provision will operate to the detriment of the minority. Because the Majority Leader controls the floor, he would protect members of his caucus by not making a request if a member of his caucus would object. Therefore, the provision would be used exclusively to force disclosure by the minority. A Majority Leader would also object to any request made by the minority, in his position as Leader, to prevent the minority from controlling the Senate schedule. This would likewise protect members of the majority as the objection by the Majority Leader, acting in his individual capacity as a Senator, would ensure that no other member of the majority would have to disclose any reason for an objection.
- Requires that Senate committees and subcommittees post video recordings, audio recordings, or transcripts of all public meetings on the internet.
- Changes Senate Rule XV to require that motions to recommit be reduced to writing and copies provided to the Majority and Minority Leaders.
- Expresses the Sense of the Senate that conference committee processes should be open and transparent.

### Earmark Reform (Section 521)

- Requires that all earmarks in bills, resolutions, conference reports, and managers' statements be identified and their sponsors posted on the internet at least 48 hours before a vote. The original Senate-passed bill required that the parliamentarian determine whether the disclosure requirements had been met; the House amendment grants the authority to make this determination to the Senate Majority Leader or committee chairman.

- Requires that Senators requesting earmarks comply with certain disclosure and certification requirements. Senators would be prohibited from requesting earmarks that provide only a pecuniary benefit to a Senator or his or her immediate family member. Earmarks that benefit both an immediate family member and a non-family member would not be subject to the requirement.
- Subjects new directed spending in a conference report (when the new spending was not approved by either House) to a point of order.

#### Employment-Related Provisions (Sections 531, 532, and 534)

- Restates in the Senate Rules the post-employment restrictions written into statute to prohibit Senators from lobbying Congress for two years and for officers and senior employees from lobbying the Senate for one year after leaving Senate employment.
- Extends to the Senate, through Senate Rules, the same post-employment negotiations that Section 301 requires for Members of the House and senior staff.
- Restates in the Senate Rules the prohibition against influencing hiring decisions solely based on partisan affiliation.

#### Elimination of Privileges for Former Members Who Become Lobbyists (Section 533)

- Revokes Senate floor privileges and the use of the Members' exercise facilities and parking for former Senators and former officers of the Senate and former Speakers of the House who become registered lobbyists.

#### Ban on Gifts from Lobbyists and Entities that Hire Lobbyists (Sections 541 and 543)

- Prohibits Senators and staff from accepting gifts from registered lobbyists or a private entity that employs or retains a lobbyist. Also requires market valuation for entertainment tickets.
  - There is no current guidance on what constitutes a "private entity that retains or employs a registered lobbyist." There is also little legislative history with respect to this bill that would provide guidance. It is not clear by the legislative text or legislative history whether the definition of an "entity" includes the entity's dues-paying members (i.e., a doctor who is a member of the American Medical Association) or those who make charitable contributions to the entity (i.e., a donor to the American Cancer Society).

#### National Party Conventions (Section 542)

- Prohibits Senators from attending parties held in their honor at national party conventions if the events are sponsored by lobbyists, unless the Senator is a presidential or vice presidential nominee.

#### Restrictions on Participation in Travel (Sections 544 and 546)

- Prohibits Senators and staff from accepting private travel from registered lobbyists and entities that employ or retain lobbyists, and prohibits lobbyists from organizing or participating in travel by Senators or staff.
- Allows Senators and staff, with pre-approval from the Senate Ethics Committee, to accept travel provided by: (1) entities that employ lobbyists if it is necessary to participate in a one-day meeting, speaking engagement, fact-finding trip, or similar event; or (2) by 501(c)(3) organizations.
- Requires that Senators pay fair market value (charter rates) for flights on private jets not operated by an air carrier certified by the Federal Aviation Administration for official or campaign travel.
- Requires that travel information for trips financed by outside groups be posted on a searchable website by January 1, 2008.

#### Attendance at Constituent Events (Section 545)

- Allows Senators and staff to accept free attendance at an event in their home state if it is sponsored and attended by a group of constituents, provided no registered lobbyists attend and the cost of any meal served is less than \$50 per person.

#### Lobbying Contact with Spouses or Immediate Family who are Lobbyists (Section 552)

- Prohibits a Senator's spouse (unless such spouse was a registered lobbyist at least one year prior to the Senator's most recent election to office or to their marriage) from engaging in lobbying contacts with any Senate office.
- Prohibits Senators' immediate family members who are registered lobbyists from engaging in lobbying contacts with the Senator's staff.

#### Mandatory Senate Ethics Training for Members and Staff (Section 553)

- Requires the Senate Ethics Committee to conduct ongoing ethics training and awareness programs for Senators and Senate staff.

#### Annual Reports on Ethics Enforcement (Section 554)

- Directs the Senate Ethics Committee to issue annual reports involving allegations of violations of Senate Rules and the disposition of any such cases involving the same.



## **Title VI – Prohibited Use of Private Aircraft**

### Restrictions on Use of Campaign Funds for Noncommercial Flights (Section 601)

- Places significant restrictions on the use of non-commercial flights by candidates for federal office. Senate and Presidential candidates must either: fly commercial or pay the fair market value of a flight (divided by the number of candidates on board). House candidates may either fly commercially or on planes which are owned by the federal government or a state government.
  - Concerns have been raised that this provision does not recognize the challenges facing Senators of geographically large states with limited commercial air service. This provision would make it difficult for those Senators to travel around their states to meet with constituents.
  - The formula to allocate costs could result in Senators paying the full cost of a non-commercial flight even if other paying passengers were on board.
  - Furthermore, while this section provides House members with the ability to fly on federal or state government aircraft, there is no similar provision for Senators or Senate staff. The question has been raised as to whether this provision would prevent Senators from flying with elected officials from their own state on a state-owned aircraft even to fly over areas of the Senator's state affected by a national disaster.
- Requires candidates for the House to comply with Rule XXIII, paragraph 15, which prohibits use of non-commercial aircraft.

## **Title VII – Miscellaneous**

### Sense of Congress that Restrictions on Congressional Officials Should Apply to Executive and Judicial Branch Officials (Section 701)

### Toughening Penalties for Falsifying Financial Disclosure Forms (Section 702)

- Increases the penalty for Members of Congress, senior staff, and senior executive officials for falsifying or failing to report financial disclosure forms from \$10,000 to \$50,000 and establishes criminal penalties of up to one year of imprisonment.

### Rules of Construction (Section 703)

- Provides that the provisions of the bill shall not be construed to interfere with First Amendment free speech, free exercise, or free association rights.

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## **Administration Position**

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A Statement of Administration Policy (SAP) was unavailable at the time of publication. However, during prior consideration of this legislation by the Senate, the Administration issued a SAP in support of the bill. The SAP expressed support for lobbying reform saying that the “American people expect their elected officials to uphold the public trust and to act in a manner worthy of public responsibility.” The SAP also expressed support for earmark reform; however, the SAP noted that the “Senate bill falls short on achieving the reforms...that would bring greater transparency and accountability to the congressional budget process.” The SAP also encouraged Congress to enact the Line Item Veto in order “to give the President the authority to strip out wasteful spending and earmarks from a bill.”

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## **Cost**

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A Congressional Budget Office cost estimate of the bill’s budget impact, as passed by the House, was not available. It is expected that any impact will be negligible.